

EO Technical Assistant

APR 08 1986

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

The evidence submitted discloses that you were incorporated under the non-profit laws of the State of [REDACTED] on [REDACTED]. Your purposes briefly stated are:

"to establish a nonprofit homeowners association within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1954...."

"to provide for maintenance, preservation and architectural control of the residence property and common areas...."

"to promote the welfare of the residents within the above-described property...."

The membership shall be a non-stock corporation and shall be owned equally by the members. Ownership of a unit within the residence property shall be the sole qualification for membership and shall be entitled to one vote for each unit owned. The rights of membership are subject to the payment of monthly and special assessments levied by the association. The obligation of such assessments is imposed against each owner of and becomes a lien upon the unit against which such assessments are made.

Your support is from assessments against owners. Expenditures are for maintenance, insurance, garbage receptacles, utilities and the care of the common areas of the project.

Section 501(c) of the Code describes certain organizations exempt from Federal income tax under section 501(a) and reads, in part, as follows:

"(3) Corporations, *** fund, or foundation, organized and operated exclusively for religious, charitable, scientific, ***literary, or

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Surname		[REDACTED]	[REDACTED]				
Date		4-8-86	4-9-86				

vention of cruelty to children or animals, no part of the net earnings which inure to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

Section 1.501(c)(3)-1 of the regulations provides, in part, as follows:

"(d)(1)(ii) An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests."

When an organization's source of income is principally from membership dues and is used for the payment of benefits for members, it is essentially a mutual self interest type of organization. Your income is used to provide for direct benefits like yard work, utilities and insurance to the members. Any benefits to the larger community is minor and incidental.

Therefore, we conclude that you are not operated exclusively for section 501(c)(3) purposes and are not entitled to exemption from Federal income tax under the provisions of section 501(c)(3) of the Code.

Although, a Form 1024 was not submitted for exemption as a section 501(c)(4) organization, consideration was given for section 501(c)(4).

Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in permitting in some way the common good and general welfare of the people of the community.

Revenue Ruling 74-17, 1974-1 Cumulative Bulletin 130 holds that an organization formed by the unit owners of a condominium housing project to provide for the management, maintenance and care of the common areas of the project, with membership assessments paid by the unit owners does not qualify for exemption under section 501(c)(4) of the Code.

The concept of social welfare implies a service or program directed at benefiting the community rather than a private group of individuals. Like the organization described in Revenue Ruling 74-17, you are providing services to your members that they would otherwise have to provide for themselves. You are a private cooperative enterprise for the economic benefit and convenience of your members. Any benefits to the community are not sufficient to meet the requirements of the regulation that you will be operated primarily for common good and general welfare of the people of the community.

Therefore, we conclude that you would not meet the requirements for section 501(c)(4) should a Form 1024 be filed.

Although you do not qualify for exemption under sections 501(c)(3) and 501(c)(4) of the Code, it appears you may qualify for treatment under section 528, which is applicable to certain homeowners associations. We are not ruling on your organizations treatment under section 528. Enclosed for your information is Publications 588 and 530.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If this determination letter becomes a final determination, we will notify the appropriate State Officials, as required by section 6104(c) of the Code, that based on the information we have, we are unable to recognize you as an organization of the type described in Code section 501(c)(3).

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-addressed envelope as soon as possible.

If you have any further questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely,


District Director

Enclosures:

Publication 892, 588 and 530
Form 6018